The Resource Page: Focus on Legal Writing

BOOKS


Two aspects of its preparation and design make this the best English-usage book available today. First, computer-assisted research has allowed Bryan Garner to search thousands of sources to find answers to what usages actually are in use today. For example, Garner's search of the NEXIS databases found 10,138 references to ethicist but only 25 to ethician. Garner concludes that although ethicist dates back to the 17th century and thus has precedence in most dictionaries, it is a needless relic in today's English. Second, Garner is simply unsurpassed in the sweep of his knowledge, the clarity of his explanations, and the ability to form the sound judgments that are at the heart of all debates about proper usage.


Like a normal dictionary, its entries are alphabetical, but this dictionary covers questions of usage, not definitions. From standard questions like when to use "which" and "that" or "affect" and "effect" to legal-specific issues like the proper use of the word "precedent" or whether you can use the word "conclusory" even though it's not in the dictionary, Garner supplies good advice that's clearly written. He also provides good sources, like the citation to Greenwood v. Wierdja, 741 P.2d 1079, 1086 n.3 (Wyo. 1987) ("[W]e like the word conclusory, and we are distressed by its omission from the English language. We now proclaim that henceforth conclusory is appropriately used in the opinions of this court."). If you were to limit yourself to only one resource from those listed on these pages, this is probably the best single background resource for the legal writer: it contains much of the information separately covered in his Dictionary of Modern American Usage, while also providing many entries specific to legal writing. For the judge, we add that Garner provides some useful comments about writing style and judicial opinions, as well as his own brief bibliography on those subjects, under the headings "Legal Writing Style" and "Opinions, Judicial."


This guide is specifically modeled after the best-known general style manual, Strunk & White's The Elements of Style. It includes much good advice, with a majority of the book devoted to advice specific to legal writing.


For those of you who like to hear opposing viewpoints, this is a great English-usage book. It draws from dozens of other usage authorities, telling you what's generally accepted and, when appropriate, why some disagree with the generally accepted position.


Inexpensive but accurate advice is available in this book, which reports in many cases on the opinions of the 158-member American Heritage Usage Panel. Where else can you learn that most of the panel members believe that only women can be called vivacious, while only men can be considered debonair? Usage Panel members at the time of publication included Justice Antonin Scalia, Carl Sagan, Senator Daniel Patrick Moynihan, James Michener, and Garrison Keillor.


The prior, 6th edition of Black's Law Dictionary was published in 1990. Four years later, Bryan Garner, leading a team of editors, legal historians, scholars, lawyers, and judges, began work on a complete revision. Every definition was reexamined and hundreds of new entries were added. Garner's first work product was a pocket edition that came out in 1996; its definitions were clear, concise, up-to-date, and simply superior to the 1,657-page 6th edition. Garner's full edition, Black's 7th, came out in 2000. In 2001, for the first time, the United States Supreme Court relied specifically on one of the dictionary's definitions in deciding a case. See Buckhannon Board & Care Home v. West Virginia Department of Health & Human Resources, 121 S.Ct. 1835, 1853 (2001)(Ginsburg, J., dissenting) (“The Court derives this ‘clear meaning’ [of the term ‘prevailing party’] principally from Black's Law Dictionary . . . ”). All three editions contain the word conclusory, which is not found in the Oxford English Dictionary but is a favorite of lawyers and judges. For opinion writing, you'll want the full, hardcover edition; for home or general use, though, either of the paperback editions is quite good.

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ARTICLES ON OPINION WRITING

Chicago Law Review Special Issue on Judicial Opinion Writing

Copies of this special issue, the Fall 1995 issue of the Chicago Law Review, can be ordered from the William S. Hein Company (1-800-828-7571; www.wshein.com) for $20 plus shipping. The issue includes an entertaining exchange between federal appellate judges Richard Posner and Patricia Wald.


Benjamin N. Cardozo, Law and Literature, 48 Yale L. J. 471 (1939).


USEFUL WEBSITES

http://www.bartelby.com/61/

This dictionary is available online, along with several other American Heritage resources, including Roget’s Thesaurus. By searching the “American Heritage Collection,” you can find the dictionary definition of a word, any other words that include that word in their definition, and synonyms or antonyms from the thesaurus. Searching for the word “condemn,” for example, not only turns up all five definitions of that word (including its legal meaning of appropriating property for public use), but also leads you to the entries for damn, denounce, decry, deplore, disapprove, criticize, doom, and proscribe. We prefer the elegance of the oversized, eight-pound hardback version of the dictionary, but it’s awfully convenient to have this full dictionary (and more) available to you wherever you can connect to the Web.

Bartelby.com
http://www.bartelby.com

The Web is vast and hard to search, but we feel certain that the depth and breadth of information available for writers at this website is not matched anywhere else. The contents include the American Heritage Dictionary of the English Language, the American Heritage Book of English Usage, the Columbia Encyclopedia, the World Factbook, the Columbia Gazetteer of North America, Roget’s Thesaurus, Bartlett’s Familiar Quotations and two other quotation collections, the complete works of Shakespeare, poetry from Emily Dickinson, Robert Frost, Walt Whitman, and others, the King James version of the Bible, Gray’s Anatomy of the Human Body, William Strunk’s 1918 The Elements of Style, and Emily Post’s 1922 Etiquette. A search engine allows convenient searching of one or all of these resources.

HyperGrammar
http://www.uottawa.ca/academic/arts/writcent/hypergrammar/

Jack Lynch’s Guide to Grammar and Style
http://andromeda.rutgers.edu/~jlynch/Writing/

Don’t want to plunk down the money for one of the usage dictionaries? Well, the Web won’t give you the same depth of coverage, but you can find the basic rules at either of these sites.
NEW BOOKS

In its review of this book, the New York Times said, “Any reader who has gone through a tour of jury duty is likely to respond to this engaging book with a glow of recognition.” Given some of the views expressed in the book, we hope that few jurors have had the experiences of Burnett, who served on the jury in a New York murder trial. Burnett’s jury spent most of its first two days of deliberation trying to figure out the jury instructions, which had been read once in court and not provided to the jurors in writing. The trial judge, who is not named, is described as a “dry and disagreeable man” who ran the court in a tyrannical fashion. For any judge operating in a jurisdiction or courtroom in which modern jury reforms (written instructions given at the start and close of trial, juror note-taking, etc.) have not been adopted, this first-hand account of the reactions of a juror trying to do his job in a trial using traditional methods merits review.

Judge Posner, the long-time intellectual leader of the law and economics movement, extends his discussion of the influence of the social sciences on the law. In this book, he discusses the influences on the law of psychology, history, and statistics, while keeping the influence of economic principles front and center throughout. As always, his treatment of these issues is original and well-researched.

Bryan Garner’s latest contribution to the legal writing world is based on the highly successful seminars he has given to thousands of lawyers. Most of the advice in the book could apply to any writing, not just to writing lawyers’ briefs, research memos, or contracts. For example, his suggestions for directly dealing with counterarguments would apply just as well to the writer of a judicial opinion as to the author of a brief. The book concludes with a helpful, 17-page summary of the correct uses—and most common misuses—of punctuation.

WEBSITE UPDATES

National Center for State Courts http://www.ncsconline.org

Even if you’ve been there before, take a moment to go to the National Center for State Courts website. It has been totally redesigned and the effort no doubt invested in the website design work has greatly improved both the appearance and functionality of the site. Lots of useful reports can be found online. At the Research Division page, for example, more than 25 different reports are available on the first page alone. Or, if you need salary data, the semiannual survey of state judicial salaries can be found easily by using the search engine found in the upper right-hand corner of the National Center’s home page and typing in “judicial salary.”

TOP COURT WEBSITES

Best Overall Sites
2. North Dakota Supreme Court http://www.court.state.nd.us
3. Maricopa County Superior Court http://www.superiorcourt.maricopa.gov
4. New Jersey Judiciary http://www.judiciary.state.nj.us
7. Los Angeles Superior Court http://www.lasuperiorcourt.org
9. Dakota County District Court http://co.dakota.mn.us/courts

Best Educational Sites
1. Arizona Supreme Court http://www.lawforkids.org
3. Maricopa County Superior Court http://www.superiorcourt.maricopa.gov
5. Eighteenth Judicial Circuit, Florida http://www.18thcircuit.state.fl.us

Best Public Access Sites
2. Dakota County District Court (Minn.) http://www.co.dakota.mn.us/courts
5. Los Angeles Superior Court http://www.lasuperiorcourt.org

[Top court websites as announced at the CTC7 Conference, sponsored by the National Center for State Courts, held August 14-16, 2001 in Baltimore, Maryland.]

FOCUS ON LEGAL WRITING

The Resource Page focuses on resources that can help you with legal writing on pages 46-47.